

**ORIGINAL**

FILED IN THE  
UNITED STATES DISTRICT COURT  
DISTRICT OF HAWAII

APR 30 2008

at 7 o'clock and 40 min. P. M. 8  
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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,

Plaintiff,

vs.

SILVER JOSE GALINDO,

Defendant.

) CR. NO. 04-00053 DAE  
)  
)  
) DEFENDANT'S FIRST  
) SUPPLEMENT TO MOTION  
) FOR JUDGMENT OF ACQUITTAL  
) AND/OR ALTERNATIVELY FOR  
) A NEW TRIAL; MEMORANDUM  
) OF LAW; CERTIFICATE OF  
) SERVICE  
)  
) HEARING:  
)  
) DATE: May 7, 2008  
) TIME: 9:45 A.M.  
) JUDGE: David A. Ezra  
)  
)  
) TRIAL #1: April 1, 2008  
) TRIAL #2: October 7, 2008  
)

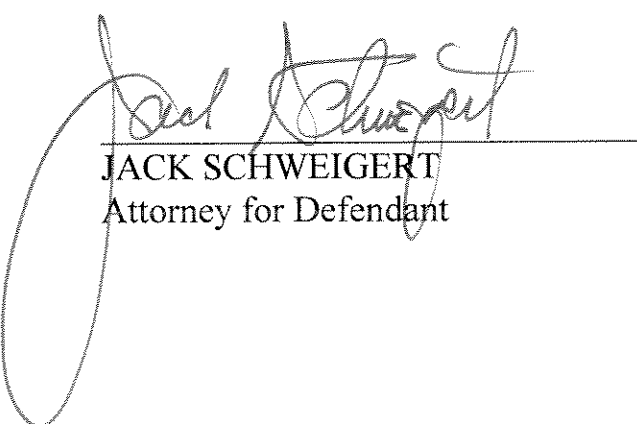
**DEFENDANT'S FIRST SUPPLEMENT TO MOTION FOR  
JUDGMENT OF ACQUITTAL AND/OR ALTERNATIVELY A NEW TRIAL**

On April 28, 2008 Defendant Galindo filed a Motion for Judgment of Acquittal and/or Alternatively a New Trial. As to Count 3 an additional argument must be made regarding the 924c charge.

More specifically for a conviction under 18 U.S.C. § 924c there must be "evidence sufficient to show an **ACTIVE EMPLOYMENT** of the firearm by the defendant, a use that makes the firearm an operative factor in relation to the predicate offense." U.S. v. Guess, 203 F.3d 1143, 1146 (9th Cir. 2000). In that regard use does not encompass mere possession, especially where a weapon is kept at or near the site of a drug crime for purposes of emboldening the offender. Id. As the Court ruled in Guess, without additional facts, such as a wrongdoer's disclosing the availability of the weapon in order to intimidate, the inert presence or **SIMPLE STORAGE** of a firearm does **NOT** equal use. Id. @ 1146-1147.

Applying this law to that to the facts in Count 3, not only do we have two police officers giving totally inconsistent statements about where Mr. Galindo's identification was found, but there was nothing more than simple storage of a gun allegedly wrapped up in a jacket some distance away from Mr. Galindo who was hiding from the police in the attic at Mr. Ingram's home. Therefore the active employment requirement does not exist in Count 3 and a judgment of acquittal must be granted.

DATED: Honolulu, Hawaii, April 30, 2008.



JACK SCHWEIGERT  
Attorney for Defendant

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,	)	CR. NO. 04-00053 DAE
	)	
Plaintiff,	)	CERTIFICATE OF SERVICE
	)	
vs.	)	
	)	
SILVER JOSE GALINDO,	)	
	)	
Defendant.	)	

**CERTIFICATE OF SERVICE**

It is hereby certified that on April 30, 2008, a copy of the attached document was served via facsimile to Fax No. 541-2958 on the below individual addressed as follows:

DARREN W.K. CHING, ESQ.  
Assistant U.S. Attorney  
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Attorney for U.S.A.

  
\_\_\_\_\_  
JACK SCHWEIGERT  
Attorney for Defendant